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Contribution from the Office of the Solicitor,

ROBERT W. WILLIAMS, Solicitor.

THE MIGRATORY BIRD TREATY ACT.

Extract from Charge Delivered to the Grand Jury in the District Court of the United States for the Middle District of Alabama at Opelika, April 4, 1921, by Hon. HENRY D. CLAYTON, United States District Judge for the Northern and Middle Districts of Alabama.

GENTLEMEN OF THE GRAND JURY: I call your attention to our national migratory bird law. I do this for the purpose of asking you to examine into any infractions of this law; and also for the purpose of directing public attention, as far as I can, to this important subject, to the end that uninformed sportsmen may not violate the law and to warn those who are not sportsmen that they must not violate the law. Besides, I ask that when you return to your homes and mingle again with your neighbors and their bright boys and pretty girls you talk at every convenient opportunity on this subject. I want all of our boys and girls to become more familiar with our birds: their usefulness, their beauty, and the music of these choristers of our fields and woods. There will be less robbing of birds' nests and there will be less destruction of the useful and beautiful birds.

It is a matter of history that the people and the authorities of the Dominion of Canada complained of the wanton destruction of wild birds hatched and raised in Canada and afterwards migrating into the United States. This was especially true of the ducks, geese, and brant. So our Government negotiated a treaty with Great Britain and Canada for the purpose of affording reasonable protection to migratory birds. Congress has passed a penal statute on the subject, and has authorized the President and his subordinates to formulate and proclaim rules and regulations in regard to wild birds of migratory habits.

Recently in Alabama some of our sportsmen have discussed in the public prints the question whether or not the dove, the mourning dove—sometimes called the turtle dove—is a migratory bird. The question is not debatable. Congress has declared the dove to be migratory and within the protection afforded by the national migratory bird law. Of course, many doves are hatched and raised here,

but that does not refute the legal ascertainment that the dove is a migratory bird. As a matter of law the dove is migratory, for the act of Congress and the rules and regulations made in pursuance thereof declare it to be such. That fact is just as well settled as the fact that Choctawhatchee River at Bellwood in Geneva County in this State is a navigable stream, for the act of Congress declares it to be navigable, although in dry weather an athletic young man can almost jump across the stream at that point. When I was your Representative in Congress it became my duty to have a special act passed, authorizing the railroad company to build a bridge across that stream there, because Congress had declared it to be a navigable stream, and no bridge could be built across it without congressional permission.

Provisions in the migratory bird law afford protection during certain seasons, which the law and regulations mention specifically, against the killing or capturing of the numerous families of migratory birds, including swans, ducks, geese, cranes, rails, plovers, snipe, curlew, woodcock and others, some of which, we, in this section, never see and know but little about, as they never come inland but frequent the seashores and tidal marshes. As a general rule there is no open season for insectivorous birds, and it is a violation of law to kill or capture these at any season. Among the birds thus protected I may mention the flicker, commonly called the yellowhammer, woodpeckers, robins, bee martins, and others, including bull bats. Now let me say a good word for the bull bat. The ornithologists tell us that it is entirely insectivorous and my observation confirms me in the belief that this is so. This bird is harmless and yet very useful. It feeds altogether on flies, gnats, mosquitoes and other insect pests. Reed birds or rice birds, and as we sometimes speak of them, blackbirds, including the large blue-blackbird, are at all times protected against destruction, except in a limited number of rice-growing States where the rice bird or blackbird harms crops. There the farmer is permitted to prevent destruction of crops by them. The immunity of this bird under the law ought to be relaxed here in Alabama, for we often see, in the grain-sowing season in the fall and in the early spring, these birds feeding in our fields on the grain—wheat, oats, and rye—which the farmer has not sufficiently covered in planting, and in the spring time feeding on this grain when in the dough state. I commend our United States district attorney for having called the attention of the authorities at Washington to this fact, and I hope proper relief may be afforded to our farmers against the depredations committed by these visiting birds. Every man who loves the sport of shooting should send a request to the United States Department of Agriculture and ask for Bulletin 1138 which contains the game laws, State and Federal. It will cost only the postage on his letter or card.

My love of birds is my excuse for trespassing further on your time. You will agree with me that it is a crime to kill a mocking bird. Here in south Alabama they sing for us in all seasons. You and I have heard them even on a moonlit night in December, singing as if they would infuse some of the joy of their little hearts into human souls. Who is it that begrudges the few strawberries, raspberries, or cherries that they eat. They more than pay for these

small contributions to their board with music and by the destruction of insects.

I am glad that the sportsmen of Alabama have long since outlawed the trapshooting of live pigeons. Rev. Luther L. Hill, the father of that distinguished surgeon, Dr. L. L. Hill, and Hon. William W. Hill, and the other fine sons, delivered a sermon some years ago at Snowdoun, in Montgomery County, against the trapshooting of pigeons. It broke up that cruel sport in that county and in the State. I wish every man and woman in Alabama could read that sermon. I have read and reread it with great pleasure and profit.

Let me say another thing. Under the administration of Mr. Wallace, our commissioner of conservation, pothunting has been broken up in Alabama, and we now have more bob whites than ever before. However, I am sorry to say that we still have with us some game hogs; that is, huntsmen so greedy that they kill more birds than the law allows. These "hogs" delight in exceeding the legal limit. They give no consideration to leaving some birds in the fields and coverts in order that birds may be propagated the next year. Some use the automatic repeating and the pump guns. I wish it were unlawful in Alabama for any man to carry, own, or use such a gun. Two shots at a covy on the rise ought to be enough, and the second shot at any single bird is more than enough. The sportsman always plays a fair game. Give the birds a fair chance and we will have more birds next year.

Under this migratory bird law any employee of the Department of Agriculture is authorized by law and by the Secretary of Agriculture to enforce its provisions and has power to arrest without a warrant any person committing a violation of the act in his presence or view and to take the offender before a trial officer or court. Let me emphasize the fact that it is the intention of Congress and the courts to have this law enforced * * *.

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